Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Implementation of the Telecommunications Act of 1996 Telemessaging, Electronic Publishing, and Alarm Monitoring Services	CC Docket No. 96-152

Reply Comments of the
Newspaper Association of America

The Newspaper Association of America ("NAA") hereby submits its reply comments in response to the comments of other parties in this proceeding.

I. Introduction and Summary

We support the many commenters who urge the Commission to enforce the electronic publishing requirements of section 274 as Congress wrote them as the best means of protecting consumers and promoting competition. In particular, we reemphasize the importance of according the flexibility intended by the Act for electronic publishing joint ventures, which for many publishers may represent the best and most efficient way of participating in the new electronic market.

Only two issues go sufficiently beyond these principles to merit a reply:

- BellSouth's contention that section 274 may be constitutionally

infirm has no merit.

- Time Warner's request to impose restrictions on electronic publishing joint ventures beyond those in the Act is unnecessary and would be counterproductive.

II. The Electronic Publishing Safeguards Are Constitutional (¶¶1-18)

BellSouth (p. 3) asserts that the electronic publishing safeguards are an impermissible prior restraint on BOCs' speech activities. BellSouth does not support this argument, nor could it, with convincing analysis. The Commission should disregard this frivolous claim.

Because BellSouth correctly observes that "the Commission has no discretion to ignore Congress' mandate" we will not reply extensively. There can be no doubt, however, that Congress can enact "narrowly tailored" economic regulations that affect speech. The separated affiliate requirement in the 1996 Act is a reasonable approach to detecting and preventing cross-subsidy and discrimination that does not unnecessarily burden the BOCs' right to speak. The BOCs' and all of their affiliates can still speak through any other means, including electronic publishing, as long as the electronic publishing does not use the BOCs' basic telephone service. And the BOCs' can speak via their separated affiliate as well, subject only to reasonable transactional and other economic regulations. Furthermore, the separated affiliate requirements are transitional in nature, expiring four years after

enactment. And they serve the important government interest of promoting competition and protecting consumers. As such, they do not violate the First Amendment.

Nor are the safeguards a bill of attainder, as BellSouth also suggests. A bill of attainder is a legislatively imposed punishment. The Act does not single out the BOCs for punishment, but merely for temporary, narrowly-focused, economic regulation.

III. Electronic Publishing Joint Ventures Should Not Be Subject to the Same Requirements as Separated Affiliates (¶¶32-48)

There is no doubt that Congress intended to encourage electronic publishing joint ventures as one of the most important ways to increase public service and competitiveness. Time Warner's (pp. 14-15, 18, 20) and MCI's (pp. 4-5) suggestions that the same restrictions that apply to separated affiliates also be applied to joint ventures would be contrary to Congress' express language in the Act and would not be sound policy.

The Act is very clear, for example that the restrictions of sections 274(b)(5) and (7) apply only to separated affiliates, yet Time Warner urges that these restrictions be extended to electronic publishing joint ventures on the Commission's own initiative.[1] Such an embellishment of the requirements desired by Congress could impede the ability of BOCs and publishers to bring together their respective strengths in joint ventures,

[1] MCI makes a similar argument, but only for section 274(b)(5).

while adding little to the safeguards already in the Act. The Act mandates that electronic joint ventures have a majority owner or equal partner who is not affiliated with the BOC.[2] The presence of this independent party will more than counterbalance any risk presented by the somewhat less stringent separation requirements that apply to joint ventures. Those regulations that do apply—including separate books, debt limitations, arms length dealing, affiliate transaction rules, and annual compliance reviews—will be sufficient to prevent and detect cross subsidy and discrimination.

For a joint venture to be successful, it should be left to the negotiating parties to determine whether the BOC will provide personnel, property, or R&D to the joint venture. The non-BOC partner may not have the appropriate resources in these areas. That is why these items were not restricted in the joint venture requirements. Because the joint venture cannot be exclusive, the non-BOC partner will have no assurance that resources the venture obtains from the BOC will not be made available to others. Thus the partner's incentives will be to limit BOC participation to that which is genuinely necessary to the viability of the venture. Congress wanted to encourage such private solutions to industry restructuring. The Commission should not erect artificial barriers to carrying out this intent.

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[2] The BOC may own more of a joint venture with a small, local publisher.

IV. Conclusion

NAA urges the Commission to interpret and enforce section 274 of the 1996 Act in accordance with out Comments and the above recommendations.

Respectfully submitted,

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